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United States
Circuit Court of Appeals
For the Ninth Circuit

THE WASHINGTON WATER POWER COMPANY, A CORPORATION,

APPELLANT,

V.

KOOTENAI COUNTY, A MUNICIPAL CORPORATION, AND FRED E. WONNACOTT, AS ASSESSOR AND EX-OFFICIO TAX COLLECTOR OF KOOTENAI COUNTY, IDAHO, AND HIS SUCCESSOR AND SUCCESSORS.

APPELLES,

BRIEF OF APPELLES

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO, NORTHERN DIVISION.

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UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO, NORTHERN DIVISION.

By this appeal, the Washington Water Power Company is seeking to have reviewed the judgment of the District Court in and for the District of Idaho, wherein the Company sought an injunction against the collection of its taxes in Kootenai County; And where there is no showing of fraud on the part of the Assessor or Board of Equalization; and the only claim made is that the tax is excessive, and

there being a great conflict in the evidence submitted as to the full cash value of the property of the Company.

ARGUMENT AND AUTHORITIES.

The appellant urges only a few of its many assignments of error. We will notice the assignments made by the appellant in their order:

JURISDICTION:

We earnestly urge that a court of equity is without jurisdiction to grant relief, by injunction against the collection of a State and County Tax, where the only claim urged is that the tax is excessive; and where it is conceded there was no fraud committed by the taxing officers.

It is true that the appellant alleged fraud on the part of the taxing officers, but they did not attempt to substantiate this charge, and no evidence was introduced, tending to show, or showing any fraud on the part of the assessor or the Board of Equalization.

The record before the court establishes beyond any question, that the taxing officers of Kootenai county acted in accordance with their best judgement and assessed the property at what they believed to be its full and actual cash value. (Trans. pp. 496-518.)

There is no evidence in the record that tends to show a systematic intentional omission or undervaluation of other taxable property in Kootenai County.

The learned Judge in his opinion on page 623 clearly so finds and has this to say: "Turning now to the evidence, I am inclined to think that the allegation that property generally in this county was assessed at only from thirty to sixty per cent of its actual cash value, was not sustained."

If the appellant was really serious in its claim, that there was a systematic under-valuation of property in Kootenai county, and that the property was only assessed at from thirty to sixty per cent of its value, it would not be contented with having its property assessed at $1,718,636.37 which the appellant claims is the full cash value of its property.

The levying of taxes is a legislative duty, and the Legislature of the State of Idaho has provided a complete tax system. Under that system, a party who deems himself agrieved by reason of an assessment, has been provided with a remedy before the Board of Equalization, and when this board has passed upon the assessment, it becomes final.

Under the taxing law of Idaho as construed by the Supreme Court of the State of Idaho in the case of Humbird Lumber Company v. Thompson, 11 Idaho 614, an equity court has no jurisdiction to grant relief against the collection of taxes where there is no showing of fraud, and where the only claim is, that the tax is excessive. The court must assume that the officers selected by the people performed their duties as defined by the law of the State.

This being true, we respectfully submit that

the action on the part of the taxing officers of Kootenai county when they determined the assessment, was a final determination of the matter; and in order to attack the assessment in an equity court, it would be necessary for the plaintiff to show fraud on the part of the officials.

The statute of the State of Idaho under consideration is the source and measure of the power and jurisdiction, both of the assessor and the Board of Equalization, and of the Court.

In the examination of the evidence, we fail to find any evidence tending to support the charge of fraud in the bill; and the appellants in the lower court fail to show that the assessment was fraudulent or purposely oppressive, and there is no indication of any kind or character that the Assessor did not act in the utmost good faith in assessing the plaintiff's property.

The learned Judge in his opinion has this to say relative to fraud on the part of the assessing officers (rec. 641-643) "There remains the important question as to whether or not the conditions are such as to justify an injunction against the enforcement of taxes which are found to be excessive. There is very little in the record tending to support the charge that the assessing officers acted fraudulently or willfully in over-valuing the property, other than the mere fact of the over valuation itself. That in 1911 there prevailed some local feeling of unfriendliness, if not ill-will, toward plaintiff, may be fairly

inferred, and that one member of the board of equalization was, by reason of his personal controversies with plaintiff, somewhat prejudiced, is not improbable, but aside from these circumstances, there is nothing to impeach the good faith of the officers, unless the assessment, because of its essential unreasonableness, is of itself sufficient to discredit them. But it must be borne in mind that while I have reached the conclusion that $1,718,636.37 is a fair estimate of the value of the property in 1911, many of the factors involved in the process by which this conclusion was reached are admittedly uncertain and are in a measure susceptible to an honest difference of opinion. The evidence is extremely meager upon certain features of the case, and with the facts disclosed by the record, supplemented by such other information as he may have acquired in the course of his investigations, Professor Cory, who was brought into the case as a specialist of much learning and experience, hesitated, if he did not wholly decline to express an unqualified opinion as to the actual value of the property and Mr. Wiley, whose standing as an hydraulic engineer is unquestioned, in testifying upon this phase of the case, answered only a hypothetical question. Keeping in view these conditions of the case, and bearing in mind that a slight decrease in an allowance for depreciation or maintenance or for some other account, and a small increment of gross revenue, would operate materially to increase the capitalized value, and further bearing in mind that the amount of power sold in 1910,

greatly exceeds that sold in 1908, and that apparently the output in 1910 was below the full capacity of the plant, and that the revenue which may be derived from the sale of any additional power will be subject to comparatively small deduction on account of increased expense it is apparent that upon the record before us reasonable men might reach different conclusions, and that a finding of a value two or three hundred thousand dollars more, or less, than it is herein found to be, could not be set aside for insufficiency of the evidence; and it must be remembered that the assessor and board of equalization were not possessed of much of the information of which we have the benefit. It is, therefore, thought that if we had nothing but the total or aggregate valuation made by the assessor, it would not be a case in which a court could afford relief against an excessive assessment; of course, if the county officers had had the light which is now shed upon the subject by the evidence before us, a different view might be taken."

Inequalities in the valuation made under a valid law of property for taxation does not constitute grounds for enjoining the tax in the absence of fraudulent discrimination by the agents and officers charged by the law with the duty of making such valuation.

In Woodman v. Ely, 2 Federal 839, this significant language is used: "The bill alleges a fraudulently excessive levy and inequality in the valuation on the roll. Mere excessive valuation does not justify an injunction or restraining the collection of a tax

and there is an entire failure to prove fraud on the part of the Assessor."

In *National Bank v. Kimball,* 103 U. S. 732, 26 L. Ed. 469, it is said in the opinion: "The allegations are pretty full that the assessments are partial, unequal and unjust and do not result in the uniformity of taxation which Illinois requires * * * We think the Circuit Court did not err in dismissing such a bill."

In the *Railroad Tax Cases,* 92 U. S. 575, 23 L. Ed. 663, an opinion of Mr. Justice Miller, we find this language in the first syllabus: "While this court does not lay down any absolute rule limiting the powers of a court of equity in restraining the collection of taxes, it declares that it is essential that every case be brought within some of the recognized rules of equitable jurisdiction, and that neither illegality or irregularity in the proceedings, nor error or excess in the valuation, nor the hardships or injustice of the law, provided it be constitutional, nor any grievance which can be remedied by a suit at law, either before or after the payment of the tax, will authorize an injunction against its collection."

The second clause says: "This rule is founded on the principle that the levy of taxes is a legislative and not a judicial function, and the court can neither make or cause to be made, a new assessment, if the one complained of be erroneous, and also in the necessity of the taxes, without which the state could not exist, should be regularly and promptly paid into the treasury."

The foregoing cases were all approved and cited by the Supreme Court of the State of Idaho, in the case of the *Humbird Lumber Company v. Thompson,* 11 Idaho, 614;

In *Pittsburg etc. Ry. v. the Board of Public Works,* Mr. Justice Gray delivering the opinion says: "The collection of taxes assessed under the authority of the state is not to be restrained by Writ of Injunction from a court of the United States unless it clearly appears not only that the tax is illegal but that the owner of the property taxed has no adequate remedy by the ordinary processes of law, and that there are special circumstances bringing the case under some recognized head of equity jurisdiction."

In the case of *Sheldon v. Platt,* 141 Fed. Rep. 452, Justice Fuller says: "It was ruled in *Dows v. Chicago,* 11 Wall, 108, 20 L. Ed. 165, that a suit in equity will not lie to restrain the collection of a tax on the sole ground that the tax is illegal, but that there must exist, in addition, special circumstances bringing the case under some recognized head of equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title of the complainant. And Mr. Justice Field speaking for the court said: "The equitable powers of the court can only be invoked by the presentation of a case of equitable cognizance. There can be no such case, at

least in the Federal Courts, where there is a plain and adequate remedy at law." And, except where the special circumstances which we have mentioned exist, the party of whom an illegal tax is collected has ordinarily ample remedy, either by action against the officer making the collection, or the body to whom the tax is paid. Here such remedy existed. If the tax was illegal, the plaintiff protesting against its enforcement might have had his action, after it was paid, against the officer or the city to recover back his money, or he might have prosecuted either for his damages. No irreparable injury would have followed to him from its collection, nor would he have been compelled to resort to a multiplicity of suits to determine his rights. His entire claim might have been embraced in a single action. We see no ground for the interposition of a court of equity which would not equally justify such interference in any case of threatened invasion of real or personal property."

On page 1382. *Cooley on Taxations*

"But for a merely excessive or unequal assessment, where no principle of law is violated in making it, and the complaint is an error of judgment only, the sole remedy is an application for abatement, either to the assessors or to such statutory board as has been provided for hearing it. The courts either of common law or of equity are powerless to give relief against the erroneous judgments of assessing bodies, except as they may be specially empowered by law to do so. This principle is applicable to statu-

tory boards of equalization, which are only assessing boards with certain appellate powers, but whose action if they keep within their jurisdiction, is conclusive except as otherwise proved by law, although if fraud is charged there may be a remedy in equity under principles to be stated hereafter."

Circuit Judge Richards, in the case of *McNight et al, v. Dudley,* (148 Fed. Rep. 205-206) says:

"But it is insisted that the court below was without jurisdiction, that the action of the auditor was final and could not be reviewed in a suit, to restrain the collection of the taxes thus assessed. We recognize the existence in Ohio of the general rule that the decisions of taxing officers and tribunals charged with the duty of valuing property for taxation are final and conclusive."

"To these boards of Revision, by whatever name they may be called, the citizen must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment upon the value of the property upon personal examination and evidence respecting it. Their action being judicial, their judgments in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive, whatever errors may have been committed in the assessment."

California Domestic Water Co. v. Los Angeles Co. 101 Pac. 547.

Stanley v. Board of Supervisors, 121 U. S. 535, 550,

7 *Sup. Ct.* 1234,1239, 30 L. Ed. 1000.

"In the absence of fraud or malicious abuse of its powers the board of equalization is the sole judge of questions of fact and of the values of property."

Calif. Domestic Water Co. v. Los Angeles Co. 101 Pac. 547.

LaGrange etc. v. Carter, 142 Cal. 565, 76 Pac. 241.

"Nothing in the complaint appears from which fraud or abuse of discretion may be imputed to the board of Equalization."

"In nearly all the States, probably in all of them provisions are made by law for the correction of errors and irregularities of assessors in the assessment of property for the purpose of taxation. This is generally through boards of revision and equalization, as they are often termed, with sometimes a right of appeal from their decision to the courts of law. They are established to carry into effect the general rule of equality and uniformity of taxation required by constitutional or statutory provisions. Absolute equality and uniformity are seldom, if ever, obtainable. The diversity of human judgments and the uncertainty attending all human evidence precludes the possibility of this attainment. Intelligent men differ as to the value of even the most common objects before them * * * of animals, houses, and lands in constant use. The most that can be expected from

wise legislation is approximation to this desirable end; and the requirement of uniformity and equality found in the constitutions of some States is complied with when designed and manifest departures from the rule are avoided.

To these boards of revision by whatever name they may be called, the citizen must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment upon the value of the property upon personal examination and evidence respecting it. Their action being judicial their judgment in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive, whatever errors may have been committed in the assessment. As said in one of the cases cited, the money collected on such assessment cannot be recovered back in an action of law, any more than money collected on an erroneous judgment of a court of competent jurisdiction before it is reversed."

Hattie E. Stanley etc. v. Board of Supervisors, etc. 118-122 U. S. Rep, 617-630.

Mr. Justice Brewer, speaking for the court in *Albuquerque Nat. Bank v. Perea,* 147 U. S. 87, 13 Sup. Ct. Rep. 194, 37 L. Ed. 91, uses this strong and pertinent language: "The decree discussing the original and supplemental bills must be sustained. As to the tax of 1888, the case stands upon the alle-

gation that plaintiff's property was originally assessed at its full value, while other property was assessed seventy per cent thereof; that it appealed to the board of equalization for a reduction, and that such tribunal reduced the valuation, but only to eighty-five instead of seventy per cent. It would seem that the mere statement of this was sufficient. The law of New Mexico requires property to be assessed at its cash value. Confessedly, this plaintiff's property was assessed at fifteen per cent below that value. Surely upon the mere fact that other property happened to be assessed at thirty per cent below the value, when this did not come from any design or systematic effort on the part of the county officials, and when plaintiff has had a hearing as to the correct valuation and appeal before the board of equalization, the proper tribunal for review, it cannot be that it can come into a court of equity for an injunction or have that decision of the board of equalization reviewed in this collateral way."

"In the following cases it was held that mere overvaluation due to error of judgment or mistake in calculation cannot, in the absence of fraud, be remedied in a proceeding to enjoin the collection of a tax:

Coulter v. Louisville and N. R. Co. 196 U. S. 599, 49 L. Ed. 515, 25 Sup. Ct. Rep. 342;

Woodman v. Ely, 2 Fed. 839;

Exchange National Bank v. Miller, 19 Fed. 372;

Hazard v. O'Bannon, 38 Fed. 220;

Cochise Co. v. Copper Queen Consol. Min. Co. 8 Ariz. 221, 71 Pac. 946;

Wells F. & Co.'s Express v. Crawford Co., 63 Ark. 576, 37 L. R. A. 371, 40 S. W. 710;

Republic L. Ins. Co. v. Pollack, 75 Ill. 292;

Porter v. Rockford R. I. & St. L. R. Co. 76 Ill. 561;

Pacific Hotel Co. v. Lieb, 83 Ill. 602;

Chicago B & Q. R. v. Siders, 88 Ill. 320;

Gage v. Evans, 90 Ill. 569;

Union Trust Co. v. Wever, 96 Ill. 346;

Traders' Ins. Co. v. Farwell, 102 Ill. 413;

Felsenthal v. Johnson, 104 Ill. 21;

La Salle & P. H. & D. R. Co. v. Donoughue, 127 Ill. 27;

11 *Am. St. Rep.* 90, 18 N. E. 827;

Collins v. Keokuk, 118 Iowa 30, 91 N. W. 791;

Challiss v. Rigg, 49 Kan. 119, 30 Pac. 190;

Symms v. Graves, 65 Kansas 628, 70 Pac. 591;

Frankfort v. Mason & F. Co. 100 Ky. 48, 37 S. W. 290;

Odd Fellow's Hall Asso. v. Dayton, 25 Ky. L. Rep. 665, 76 S. W. 181;

Lackman v. Zumstein 10 Ohio Dec. reprint. 518;

West Portland Park Asso. v. Kelly 29 Or. 412, 45 Pac. 901;

Southern Oregon Co. v. Coos County, 39 Or. 185; 64 Pac. 645;

Southern Oregon Co. v. Schroeder, 39 Or. 607, 64 Pac. 1117;

International & G. N. R. R. Co. v. Smith County, 54 Tex. 1;

West v. Ballard, 32 Wis. 168;

King v. Gwynn, 14 Fla. 52;

Danforth v. Livingston County Treasurer, (Mont.) 59 Pac. 916;

Board of County Com'rs. of Lincoln Co., et al v. Bryant, (Kan.) 53 Pac. 775.

From the foregoing authorities we submit the rule is well established that a court of equity will not review the proceedings of a Board of Equalization or the assessment made by the assessor, and that the determination of the Board of Equalization that the assessment was a proper and valid assessment is a final determination of the matter. And we submit, that, in the absence of a showing of fraud on the part of the assessor and the Board of Equalization, which has not been done in this case, that this court has no jurisdiction to review the proceedings in this collateral manner.

FULL CASH VALUE OF APPELLANT'S PROPERTY.

We submit and seriously urge to this court that the learned Judge below did not fix $1,718,636.37 as the full cash value of the property of appellant; the court arrived at said amount by one of the systems which he used in arriving at the market value; and did not find that said amount was the full cash value of the property, as is shown in his opinion, (Trans. Rec. 646).

"While it is realized that such a decree may not do exact justice between the parties, it is not impossible that the plaintiff's assessment, as modified, is not more equal than that of many other taxpayers in the county. * * * "The net valuation upon which it must pay taxes is not greatly in excess of the actual value of its property."

The method used by the court in arriving at the above amount did not include many elements which he admitted would seriously affect the market value of the property; and one in particular: namely, The additional value which is sustained by the Post Falls plant by reason of the fact that the said plant is the controlling works of a large and valuable reservoir which adds a material increase to the value of other power sites and plants, lower on the Spokane river, belonging to the said company.

The court states in his opinion that in arriving at the amounts many of the factors involved in the process by which this calculation was reached are admittedly uncertain and are in a measure susceptible to an honest difference of opinion. The court further states (Rec. pp. 642-643): "The evidence is extremely meagre upon certain features of the case, and with the facts disclosed by the record, supplemented by such other information as he may have acquired in the course of his investigations, Professor Cory, who was brought into the case as a specialist of much learning and experience, hesitated, if he did not wholly decline to express an unqualified opinion

as to the actual value of the property, and Mr. Wiley, whose standing as an hydraulic engineer is unquestioned, in testifying upon this phase of the case, answered only a hypothetical question. Keeping in view these conditions of the case, and bearing in mind that a slight decrease in an allowance for depreciation or maintenace or for some other account, and a small increment of gross revenue, would operate materially to increase the capitalized value, and further bearing in mind that the amount of power sold in 1910 greatly exceeds that sold in 1908, and that apparently the output in 1910 was below the full capacity of the plant, and that the revenue which may be derived from the sale of any additional power will be subject to comparatively small deductions on account of increased expense, it is apparent that upon the record before us reasonable men might reach different conclusions and that a finding of a value two or three hundred thousand dollars more, or less, than it is herein found to be, could not be set aside for insufficiency of the evidence."

A court of equity will not substitute its opinion for that of an assessing officer, when there is no evidence that the assessing officers were acting in bad faith, and where the conclusion reached by the assessing officers might have been reached by any reasonable man, acting fairly and honestly.

We seriously urge that this court should not interfere with the rulings and findings of the lower court, holding that the assessment on the property

of the appellant, with the deductions made by the lower court on the small dam, bear trap dam, and railroad spur and bridge, should stand.

THE VALUE OF THE POST FALLS PLANT AS A CONTROLLING WORKS.

The appellant certainly cannot seriously contend that there is not an additional value to the Post Falls plant, by reason of the fact that it is the controlling works for a large natural reservoir, and can be used to increase the power development of other plants belonging to the company on the Spokane river below this plant; And beyond any question the company has always considered it of great importance in the development of its other power sites, as is shown by the evidence of the general manager, Mr. McCalla, given in the case of the Washington Water Power Company versus Charles Waters, et al. Mr. McCalla's evidence on record pages 94 to 99 is as follows:

"(KERNS) In other words, by holding the water of Lake Coeur d'Alene and the reservoir basin you increase the power of your Spokane plant from 21,300 to 33,400 horsepower?

A. That is it exactly. We contemplate to put in there four 7500 kilowat generators, 30,000 kilowat or a total of 40,000 electrical horse-power." * * *

"Q. Without the lake storage how much power could you generate in that new dam? A. Without lake storage we can generate in the neighborhood of 13,600. Q. With the lake storage, how much? A.

About 19,000. This same storage affects the city of Spokane; it has a pumping plant for water supply, also affects any power site on the river."

In referring to the Little Falls plant, Mr. McCalla says:

"(Court) I have note here that indicates you stated that the increase of power down there would be about 6,000 horse-power by reason of the reservoir. A. 5,400 with the complete installation. Q. Get about 5,400 by the addition of the reservoir? A. Yes."

The Supreme Court of the state of New Hampshire in the case of the *Winnipiseogee Lake Cotton & Woolen Manuf'g Co. v. the Town of Gilford,* 10 Atlantic 844, a well considered case, has this to say upon this subject:

"In appraising a water power for taxation, the assessor may consider all facts affecting its value—the original cost of the entire property, the quantity of land flowed, the magnitude of the power, the places where it is or may be used, the limitations upon its use, the income derived by way of rents, the expense of maintaining it, or anything that might justly affect the judgment of a person desiring to purchase it."

"It is immaterial where the property benefitted by the use of the reservoir rights is situated. The rights are not less a parcel of the Gilford lands in case their exercise is beneficial to mills in Massachusetts than they would be if they were used and con-

trolled for the sole benefit of mills in Gilford. It may be that the value of the mills in Massachusetts is increased by reason of the existence of the reservoir rights, and that of the rights by reason of the existence of the mills. If so, and each property is appraised for taxation at its full value, it does not follow that any portion of either property is included in the valuation of the other. The assumption that the plaintiff's reservoir rights are taxed with the Lowell and Lawrence mills to the extent that the value of the mills is increased by reason of the rights has no foundation. If, by excavation on elevated land near a city, pure spring water were found sufficient to supply, by means of an aqueduct, all the inhabitants, the effect might be not only to increase largely the value of the tract upon which the water is obtained, but also the value, to some extent, of every house and lot in the city. A taxation of the city lots and buildings at their full increased value, as the law requires them to be taxed, (*Gen. Laws*, c. 56, *1) would not be a taxation of any part of the Aqueduct Company's rights or land; nor would a taxation of the latter at their full value be a taxation of the city property, although but for the city's property, they might be substantially worthless. The value of the plaintiff's property is not affected by the fact that the benefited mills in Lowell and Lawrence are owned, not by the plaintiff's corporation, but by the stockholders, who, in place of money dividends, take as their portion of the in-

come the benefits accruing to their respective mills. The value of the Aqueduct Company's property would be neither more nor less(if all the householders and lot owners in the city were its stockholders, and instead of dividends in money, received water, each in proportion to the amount of his stock."

"If the plaintiff should sell and convey all their property in Gilford upon a condition that a purchaser regulate the flow of water, as it is now regulated, the right to the stipulated flow of water would be an interest in land situated in Gilford, and taxable. If the owner sells his dam and mill privilege reserving a right to draw a specified quantity of water the reserved right is real estate and taxable. If the owner of a mill and reservoir water right in Gilford, worth $10,000 its full value, reserving all water rights, except power sufficient for the use of the Gilford mill, his reserved rights are worth $11,000, and are taxable at that sum in Gilford. An owner of a valuable water power cannot escape taxation by putting in another the title to the soil, which is generally of little comparative value in the absence of the power. And of no value for other purposes, so long as it is used to create the power."

Our contention is that the above case, with almost the identical conditions, clearly upholds our contention, and that the learned court below was right in his opinion and findings when he stated; (Rec. pp. 628-629). "There is considerable testimony to show by reason of an impounding of wa-

ters on Coeur d'Alene lake, other parts of the plaintiff's system are greatly benefited during certain months of the year. Upon the records before us it would be impracticable to estimate the value of such advantage in dollars and cents. And it is not clear that it would be possible upon any available evidence to reduce such additional value to figures. But while it is intangible, I do not think that it can properly be entirely neglected. It is a condition of circumstance of which the contemplating purchaser would take cognizance, and by which he would to some extent at least be influenced."

PENALTY.

There is nothing in this record to show that the court imposed any penalty on the company. The judgment and decree of the court was that the company pay Kootenai County, a sum of $12,685.00. (Rec. pp. 647-648).

We respectfully submit:

I.

That under the evidence submitted and findings of the court, this cause should have been dismissed by the lower court for the reason that the court had no jurisdiction.

II.

As there was clearly no fraud shown; and as the evidence established beyond any question that the taxing officers of Kootenai County were acting honestly and fairly when this assessment was made,

the judgment and decree of the lower court should be affirmed; and the Washington Water Power Company should be compelled to pay its just proportion of the taxes of Kootenai County for the year 1911.

W. D. Vermette

Robert H. Elder

Attorneys for Appellees.

Respectfully submitted,